



South Florida Water Management District

MINUTES GOVERNING BOARD WORKSHOP

July 14, 2010

12:00 PM

District Headquarters - B-1 Auditorium

3301 Gun Club Road

West Palm Beach, FL 33406

Members Present:

Sandy Batchelor

Shannon Estenoz

Glenn Waldman

Members Absent:

Charles Dauray

Eric Buermann, Chair

Jerry Montgomery

Joe Collins

Kevin Powers

1. Call to Order - Eric Buermann, Chairman, Governing Board

Chair Buermann called the meeting to order at 12:05 p.m.

Having approximately 100 members of the Tea Party attend the meeting, Chair Buermann reported on the concerns from the citizens regarding increasing taxes and stated the Board has not considered raising taxes. Chair Buermann explained we are in the midst of a deep recession with tax revenues declining over the past two years. He said the District has not raised taxes in over ten years and there has been no discussion to raise taxes this year. Chair Buermann then discussed the U.S. Sugar land acquisition, federal court rulings and emphasized that water storage and treatment is necessary for our water supply for South Florida.

2. Pledge of Allegiance - Eric Buermann, Chairman, Governing Board

Joe Collins led the group in the Pledge of Allegiance.

3. Approval of Minutes

Approval of the Minutes for the June 9, 2010, Workshop and the June 10, 2010, Regular Business meetings held in West Palm Beach, Florida

Motion made by Shannon Estenoz, seconded by Joe Collins to Approve the following item(s): 3
Vote called. Voting yes: Shannon Estenoz, Joe Collins, Sandy Batchelor, Eric Buermann, Jerry Montgomery, Kevin Powers, Patrick Rooney, Glenn Waldman.
Motion passed.

4. Agenda Addendum - Annette Carter, Director, Office of Governing Board & Executive Services

Annette Carter, Director, Office of Governing Board & Executive Services, read into the record:

Section 120.525, Florida Statutes, allows the District to change the published agenda for good cause shown, as determined by the presiding officer. Based upon that authority, the Chairman has determined that good cause exists to make certain changes to the Agenda. These changes are being made in order to permit the Governing Board to efficiently accomplish necessary public business at this meeting and to reflect the items on the agenda that have been requested or suggested to be deleted, revised, supplemented or postponed. These changes have been listed in the Governing Board Addendum available at the entrance to this meeting room.

5. Abstentions by Board Members from items on the Workshop Agenda

Joe Collins abstained from Agenda Item 12.

6. Pull Items for Discussion from Consent Agenda

There were no items pulled from the Consent Agenda for discussion.

19. Water Resource Advisory Commission (WRAC) Report - Shannon Estenoz, Chair

(WRAC report will be heard before item 7, Adaptive Protocols for Lake Okeechobee Operations Status Update)

Shannon Estenoz reported on the WRAC meeting which was held on July 8, 2010. Items discussed were the Tamiami Trail Culverts Vegetation and Flow by Bob Johnson, Everglades National Park; the draft CERP 2010 report to Congress; Lake Okeechobee Protection Plan update and status of River Watershed Protection Plans.

Ms. Estenoz stated there was discussion by WRAC members regarding Adaptive Protocols for Lake Okeechobee Regulation Schedule, 2008.

Ms. Estenoz explained that the Adaptive Protocols effort was an effort by stakeholders to come together over the last year and look at the Lake Okeechobee Operations Schedule for flexibility or ways in which that schedule, within the confines of that schedule, could be modified to produce win-win or win-neutral scenarios for various competing water users in times of essentially low water in the lake. Ms. Estenoz stated staff and stakeholders have been working diligently over the past year to try to reach a consensus regarding this issue.

Ms. Estenoz said there is a policy issue the estuary advocates have raised that they contend is part of the Adaptive Protocols discussion, and those on the user end argue that it is outside the purview of the Adaptive Protocols discussion. She said if the Board wants to pursue this, the discussions need to take place with the Board.

WRAC passed the following motion for consideration by the SFWMD Governing Board regarding Adaptive Protocols for Lake Okeechobee Operations:

"Within the proposed staff alternatives as they stand - AP-5.3 to Ap-5.5 - is an acceptable alternative. However, a significant number of members believe that there is a fundamental policy issue regarding the restriction of water for the natural system in the absence of water restrictions for consumptive users; and, that if this issue is to be addressed, it should be discussed by the Governing Board, and the Governing Board should discuss whether such a policy should be included in the Adaptive Protocols or some other instrument.

Ms. Wehle said the allocation of water resources for the environment and for permits is a complex issue and will Workshop further discussions in August inviting WRAC members to hear the various points of view.

Mr. Montgomery suggested a joint meeting with WRAC and said he wants to ensure the Board has the background information for these discussions.

Ms. Estenoz supports a joint Governing Board/WRAC meeting.

7. Adaptive Protocols for Lake Okeechobee Operations Status Update - Susan Gray, Chief Environmental Scientist, Restoration Sciences Department (ext. 6919)

Susan Gray, Chief Environmental Scientist, Restoration Sciences Department, presented information on the boundaries of the Adaptive Protocols revisions:

- Revisions to be considered within the existing Lake Okeechobee Regulation Schedule (LORS 2008).
- Focus where the schedule allows releases "up to" an amount but does not set specific flow targets.
- Will not be considering new Lake regulation schedule.
- Will not be revising the water shortage rule.

Dr. Gray said the policy issue that has come out of these Workshops goes beyond the technical boundaries of revising the Adaptive Protocols.

Cal Neidrauer, Chief Engineer, Operations Control & Hydro Management Department, presented a flow chart in guiding recommendations for Lake Okeechobee releases to the Caloosahatchee Estuary for LORS 2008 baseflow and for environmental water supply. Mr. Neidrauer then provided the Lake Okeechobee position analysis for December 2009 and March 2010 and the modeling results for the Caloosahatchee Estuary and Lake Okeechobee Service Area.

Mr. Neidrauer then reported on Lake Okeechobee simulated minimum flows & levels (MFL) rule exceedances.

Dr. Gray explained the summary and conclusion:

- Sensitivity analysis performed to guide selection of the Low Chance parameter:
Started with AP5 - varied the Low Chance parameter from 10%-100%.
Used the most-meaningful Performance Measures.
(analysis now includes Lake O MFL exceedances)
- WRAC agreement that AP5.30 to AP 5.50 (AP5 with LowChance parameter ranging from 30% to 50%) results in improvements in the water resources of the Lake and downstream - win-win.
- Working with a range will likely require more Governing Board participation.
- Staff will bring final document to Governing Board in August.

Ms. Estenoz stated the area of division among WRAC members is that in all of these model runs, there are times where the estuary does not receive releases when no users are under shortage restrictions. This is the issue that needs to be discussed with the Governing Board members.

There was further Board discussion on the adaptive protocol process and the two issues needing further discussions.

Public Comment: Michael Collins, commented on the intention of the adaptive protocol process and what he sees as an attempt to end run the MFL recovery process and to have the Board, as a matter of policy, allocate a reservation without doing the science behind it.

Public Comment: Paul Gray, Audubon, expressed his concerns of specific model runs and cutting back water to the Caloosahatchee Estuary where consumptive users are getting all the water.

Ms. Wehle said there is an MFL established for the Caloosahatchee Estuary, an MFL for Lake Okeechobee, an a consumptive use permit (CUP) for Lake Okeechobee Service Area (LOSA). All of these tools have their own legal standing with some flexibilities for MFLs, CUPs and reservations. Ms. Wehle said part of what staff needs to do, in order for the Board to get prepared for the policy discussion, is provide information on where the Board has flexibility and/or legal constraints.

Ms. Estenoz requested the Board get a further explanation on a "level of certainty" for consumptive users.

Mr. J. Collins commented on the adaptive protocols process and feels that we are outside the boundaries of what we were addressing when we starting going down this path.

Public Comment: Jennifer Hecker, Conservancy of Southwest Florida, requested Governing Board support for policy decisions which emphasize shared water supply that provide necessary flows to natural systems in dry conditions.

Public Comment: Kahlil Kettering, NPCA, commented on his concern about the adaptive protocols document and focusing on balancing water for natural systems and consumptive uses.

Ms. Wehle said there are specific tools for the Board to make decisions for water allocations - reservations, MFLs, and consumptive use permits. A guidance document can't take water away or allocate water. Staff is recommending the Board get an understanding on those tools they have for policy decisions.

Ms. Estenoz said this issue is a huge policy decision by the Board and emphasized the importance of this discussion.

Mr. Olliff explained the Adaptive Protocols discussion has evolved into what operational changes the District can make within the existing rules in order to be able to improve the distribution of water within the system for the different users. The discussions are fundamentally focusing on the rules which is a different issue. The rule discussion needs to be held at the Board level.

Public Comment: Joan Lawrence, Department of Interior, said this policy item needs to be discussed separately from the Adaptive Protocols. Ms. Lawrence also reported there are more environmental deliveries, other than the Caloosahatchee Estuary needed from Lake Okeechobee.

Public Comment: Drew Martin, Sierra Club, commented on his concerns of CUPs and water users having certain priorities over environmental deliveries.

Public Comment: Tom MacVicar, Agriculture, said the issues need to be discussed separately and he reported on agriculture's approach to the adaptive protocols process.

Public Comment: Charles Shinn, Florida Farm Bureau, said there is a need for clear and concise direction from the USACE. He emphasized this document is for guidance only.

Public Comment: Raeann Wessel, Sanibel Captiva Conservation Foundation, commented that her understanding of this process is that this was not the vehicle to meet reservations and MFLs.

Everglades Restoration and Capital Projects

- 9. Water Quality Standards: Implementation Through Regulatory Programs (Part 3) -** Temperince Morgan, Director, Policy and Coordination Department, Everglades Restoration and Capital Projects (ext. 6987)

Temperince Morgan, Director, Policy and Coordination Department, presented the third part in the Water Quality Standards series. Ms. Morgan explained both the federal and state definition of a waterbody.

There are numerous provisions in Federal and State law that:

- Prohibit pollution
- Prohibit the discharge of pollutants into waters of the U.S. or State without permits
- Prohibit discharges that will cause or contribute to violations of state water quality standards

These provisions of law provide the foundation for numerous Federal and State regulatory programs.

Ms. Morgan then explained the federal regulatory programs:

- Clean Water Act regulatory requirements
- Section 401: Water Quality Certification
- Section 402: Point-Source Discharge Permitting
- Section 404: Discharge of Fill Material

Ms. Temperance also explained the state regulatory programs:
Implemented by FDEP, WMDs, and/or FDACS including:

- Environmental Resource Permitting
- Everglades Forever Act
- Comprehensive Everglades Restoration Plan Regulation Act
- Northern Everglades and Estuaries Protection Program

Ms. Morgan also reviewed the permits issued to SFWMD and the monitoring and reporting requirements. The next presentation will focus on regional differences in water quality standards.

Public Comment: Cynthia Plockelman, Audubon Society, requested educational information be provided to students regarding environmental restoration projects.

10. Everglades Water Quality Restoration Strategies - Tom Teets, Assistant Deputy Executive Director, Everglades Restoration and Capital Projects (ext. 6993)

Tom Teets, Assistant Deputy Executive Director, Everglades Restoration and Capital Projects, presented information on the Everglades Water Quality Restoration Strategies for the Long Term Plan, Compartment B and C Buildouts and STA performance data. He reported on the water quality exceedances and the legal events for the Loxahatchee National Wildlife Refuge.

Public Comment: Charles Lee, Audubon of Florida, commented on the STA performance data and requested to get the inflow concentrations reduced by tuning up the BMPs.

Regulatory and Public Affairs

12. Payment for Environmental Services Regional Concepts - Benita Whalen, Deputy Department Director, Water Resource Regulation (ext. 2957)

Benita Whalen, Deputy Department Director, Water Resource Regulation Department, reported on the Nicodemus Slough project as an example of a large scale dispersed storage project. Ms. Whalen provided the history behind the project:

- Alternative Water Storage Project in 2004 LOWPP
- Project concept submitted in response to a 2006 SFWMD Alternative Water Storage/Disposal request for interested partners
- SFWMD contracted Conceptual Design Study, completed April 2008
- Included in the NE Planning Documents, specifically in the Fisheating Creek Sub-Watershed Feasibility Study
- Continues to be listed in SFWMD Water Storage & Treatment Updates as Potential Project - Construction Unfunded

Ms. Whalen then reported on the project benefits and the cost of the project.

Public Comment: Charles Lee, Audubon Florida, supports this project.

13. Public Comment

Approximately 100 members of the public attended the meeting and 26 provided public comment on the District's budget and taxes.

Welcoming the large crowd, Mr. Montgomery reported on the District's outreach program and encouraged the public to review the District's website.

Michael Smykowski, Budget Director, briefly presented information on the tax revenue comparison for FY10 and FY 11. Mr. Smykowski then reported on comparison of FY08 & FY11 District Ad Valorem, SOETF and the Florida Forever Appropriations and the millage rate comparison for FY10 and FY11. Mr. Smykowski then provided staff's recommendation of a continuation of millage rates for FY10-FY11.

Ms. Estenoz explained when government was growing, this agency didn't grow, and it has put the District in a position where we can get through the current economic crisis. This agency is trying to maintain conservative fiscal management.

Chair Buermann explained the U.S. Sugar land acquisition transaction, and the Supreme Court bond validation hearings.

Ms. Estenoz commented on the importance and need for water storage and treatment.

Public Comment: Joe Budd, representing Joe Budd for Congress, District 19, opposes raising taxes and the 2006 appraisal cost of the U.S. Sugar land acquisition.

Public Comment: Daniel Diaz, Young Americans for Freedom, requested a property tax cut, asked why the U.S. Sugar land acquisition wasn't in the budget and questioned how the District is going to pay for it.

Chair Buermann commented on the affordability clause with the U.S. Sugar land acquisition and stated the District is waiting for the Supreme Court's ruling.

Public Comment: Rosa Durando, citizen, reported public taxes have supported U.S. Sugar for years. She also said the protection of the water resources is the primary duty of the Board.

Public Comment: Ellen Edmeades, Lehigh Acres, opposes the U.S. Sugar land acquisition.

Public Comment: Neil Figueredo, Punta Gorda Tea Party, commented on the cost of the land acquisition with the 2006 appraisal price and requested the Board wait to purchase the land at a lower cost.

Public Comment: Gail Fearn, Lee County, read into the record an article from the NY Times about the U.S. Sugar land acquisition and opposes this purchase.

Public Comment: Paul Gray, Audubon of Florida, supports the U.S. Sugar land acquisition and explained water supply needs, the issues of the estuaries, and the water management system of Florida.

Public Comment: Nancy Hogan, citizen, commented on the negotiations for the U.S. Sugar land acquisition, the decline in revenue and jobs, and the Board's responsibility of valuing the land.

Public Comment: Carol Hurst, citizen, commented on the economic downturn and opposes the U.S. Sugar land acquisition and asked the Board how are they going to clean up this land. She requested to wait to get a better price for this land.

Public Comment: Jan Jacobson, Everglades Institute, commented on the decline of Everglades National Park, the high price and funding for U.S. Sugar land acquisition and questioned how the District will pay for this.

Public Comment: Kahlil Kettering, NPCA, commented on the decline of Everglades National Park, the water quality and storage issues and stated the only way to solve these issues is to purchase this land for water storage.

Public Comment: Elaine Laffey, citizen, commented on raising taxes and questioned how the District will pay for the U.S. land acquisition.

Chair Buermann reiterated that the Board would not raise taxes in order to purchase the U.S. Sugar land acquisition.

Public Comment: Drew Martin, Sierra Club, supports the U.S. Sugar land acquisition and said we have to do something about water storage in the state of Florida.

Public Comment: Jim McGovern, Martin County, provided handouts to the Governing Board and stated his concerns for using tax money for projects connected to sustainable development.

Public Comment: Marianne Moran, Tea Party in Action, requested to end the bailout and to cut the citizens' taxes.

Public Comment: Karon Nunes, St. Lucie County 912 Glenn Beck Group, commented on increasing taxes and said the taxpayers need jobs.

Public Comment: John Parsons, taxpayer, commented on affordability of the U.S. Sugar land acquisition and whether purchasing this land will help the Everglades.

Public Comment: Estefena Rebellion, citizen, questioned the benefits for the community and opposes tax increases.

Public Comment: Barbara Susco, citizen, commented on eminent domain and sustainable development and said let's keep private lands in private hands.

Public Comment: Mike Tardy, Punta Gorda Tea Party, requested to end Charlie Crist's bailout and reduce taxes.

Public Comment: Paul Timmerman, citizen, asked about the funding for the U.S. Sugar land acquisition. He requested the Board think this purchase through.

Public Comment: Kathryn Thoma, Punta Gorda Tea Party, said the Board has a fiduciary responsibility to make sure this is the right deal.

Public Comment: Jennifer Hecker, Conservancy of Southwest Florida, commented on the diminishing water supply in south Florida, water restrictions, and said without this purchase for water storage and treatment, south Florida citizens are in big trouble.

Public Comment: RaeAnn Wessel, SCCF, said the only solution is to invest in the U.S. Sugar land acquisition and urged the Board to continue to pursue this acquisition

Public Comment: Jim Whelan, citizen, has concerns about the District's lost revenue from taxes. He requested to pursue other avenues to create extra revenue.

Public Comment: Everett Wilkinson, Florida Tea Party, presented the Board with signed petitions opposing the U.S. Sugar land acquisition. He requested the Board renegotiate the U.S. Sugar land acquisition.

Public Comment: Eli Zonana, Southwest Florida 912 Project, commented on the costs of the land acquisition. He requested the Board reject this proposal.

Executive Office

14. Attorney Client Sessions - Executive Office

Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in United States of America v. South Florida Water Management District, et al., United States District Court, Southern District of Florida, Case No. 88-1886-CIV-Moreno.

ATTENDEES: Governing Board Members S. Batchelor, E. Buermann, J. Collins, C. Dauray, S. Estenoz, R. Montgomery, K. Powers, G. Waldman; Executive Director C. Wehle; District attorneys S. Wood, S. Nall, C. Kowalsky, K. Rizzardi, K. Burns, J. Nutt, F. Bartolone, D. Moore. (Sheryl. G. Wood, ext. 6976)

Action Items (if any) Stemming from Attorney Client Session

Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in United States of America v. South Florida Water Management District, et al., United States District Court, Southern District of Florida, Case No. 88-1886-CIV-Moreno. (Sheryl. G. Wood, ext. 6976)

This item was deleted off the agenda.

- 15.** Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in Miccosukee Tribe of Indians of Florida, et al. v. South Florida Water Management District, Supreme Court of Florida, Case No. SC09-1817, and New Hope Sugar Company, et al. v. South Florida Water Management District, Supreme Court of Florida, Case No. SC09-1818.

ATTENDEES: Governing Board Members S. Batchelor, E. Buermann, C. Dauray, S. Estenoz, R. Montgomery, K. Powers, G. Waldman; Executive Director C. Wehle; District attorneys S. Wood, S. Nall, C. Kowalsky, K. Rizzardi, F. Bartolone, K. Burns, J. Nutt, F. Bartolone. (Sheryl G. Wood, ext. 6976)

Action Items (if any) Stemming from Attorney Client Session

Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in Miccosukee Tribe of Indians of Florida, et al. v. South Florida Water Management District, Supreme Court of Florida, Case No. SC09-1817, and New Hope Sugar Company, et al. v. South Florida Water Management District, Supreme Court of Florida, Case No. SC09-1818. (Sheryl G. Wood, ext. 69976)

This item was deleted off the agenda.

- 16.** Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in South Florida Water Management District v. Cutler Bay Venture, LLC and Miami-Dade County Tax Collector, 11th Judicial Circuit, Miami-Dade County, Florida, Case No. 07-30747 CA 10. (Sheryl G. Wood, ext. 6976)

ATTENDEES: Governing Board Members S. Batchelor, E. Buermann, J. Collins, C. Dauray, S. Estenoz, R. Montgomery, K. Powers, G. Waldman; Executive Director C. Wehle; District attorneys S. Wood, S. Nall, C. Kowalsky, K. Rizzardi, J. Nutt, F. Bartolone, M. Compagno. (Sheryl G. Wood, ext. 6976)

Action Items (if any) Stemming from Attorney Client Session

Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in South Florida Water Management District v. Cutler Bay Venture, LLC and Miami-Dade County Tax Collector, 11th Judicial Circuit, Miami-Dade County, Florida, Case No. 07-30747 CA 10. (Sheryl G. Wood, ext. 6976)

Chair Buermann recessed to Attorney Client Session at 5:10 a.m.

Chair Buermann reconvened the meeting at 5:30 p.m.

Sheryl Wood, General Counsel, reported no action be requested by the Board on Agenda Item 16.

17. Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in Collier County v. South Florida Water Management District, et al., 20th Judicial Circuit, Collier County, Florida, Case No. 09-7419-CA.

ATTENDEES: Governing Board Members S. Batchelor, E. Buermann, J. Collins, C. Dauray, S. Estenoz, R. Montgomery, K. Powers, G. Waldman; Executive Director C. Wehle; District attorneys S. Wood, S. Nall, C. Kowalsky, K. Rizzardi, J. Nutt, E. Artau, R. Panse, F. Bartolone,. (Sheryl. G. Wood, ext. 6976).

Action Items (if any) Stemming from Attorney Client Session

Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in Collier County v. South Florida Water Management District, et al., 20th Judicial Circuit, Collier County, Florida, Case No. 09-7419-CA.

This item was deleted off the agenda.

18. **Adjourn**

Chair Buermann adjourned the meeting at 5:31 p.m.

Eric Buermann
Governing Board Chairman
South Florida Water Management District Governing Board

Recorded By:

Cathy Widness
Administrative Assistant Senior
Governing Board and Executive Services
SFWMD

Motion made by Jerry Montgomery, seconded by Shannon Estenoz to Approve the following item(s): 18

Vote called. Voting yes: Jerry Montgomery, Shannon Estenoz, Sandy Batchelor, Eric Buermann, Joe Collins, Kevin Powers, Patrick Rooney, Glenn Waldman.
Motion passed.